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Attorneys for Defendant
ASROCK AMERICA, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JOSHUA SMITH, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

PEGATRON USA, INC., a California
corporation, ASROCK AMERICA, INC., a
California corporation, and FATALITY, INC.,
d/b/a Fatal1ty, Inc., a Missouri corporation,

Defendants.

Case No. 3:14-cv-01822-CRB

**ANSWER OF DEFENDANT ASROCK
AMERICA, INC. TO FIRST
AMENDED CLASS ACTION
COMPLAINT**

1 Defendant ASRock America, Inc. (“ASRock America”), by and through its attorneys, hereby
2 answers the First Amended Class Action Complaint of Plaintiff Joshua Smith (“Plaintiff” or
3 “Smith”) filed on July 3, 2014.

4 **NATURE OF THE ACTION**

5 1. According to the FAC, the term “ASRock” refers to Defendant ASRock America,
6 Inc., which, for purposes of this Answer, will be referred to as “ASRock America.” Defendant
7 ASRock America denies that it is a leading manufacturer of motherboards, it denies that it was
8 acquired by Pegatron Corporation, denies that it partnered with Fatal1ty, and denies that Fatal1ty is
9 “a company that creates specialized hardware for computer gaming enthusiasts.” Defendant
10 ASRock America further denies the remaining allegations of this paragraph.

11 2. Defendant ASRock America denies that it developed any marketing materials for the
12 ASRock Fatal1ty motherboards. Defendant ASRock America denies the allegations of this
13 paragraph.

14 3. Denied.

15 4. Defendant ASRock America lacks knowledge or information sufficient to form a
16 belief about the truth of these allegations and on such basis denies them. Said Defendant further
17 denies that plaintiff and/or the class he seeks to represent are entitled to any relief from this
18 answering defendant.

19 **PARTIES**

20 5. Defendant ASRock America lacks knowledge or information sufficient to form a
21 belief about the truth of these allegations and on such basis denies them.

22 6. Defendant ASRock America lacks knowledge or information sufficient to form a
23 belief about the truth of these allegations and on such basis denies them.

24 7. Defendant ASRock America admits the first sentence of this paragraph, admits that
25 its Sales Department operates out of its California offices, and admits that it is an indirect subsidiary
26 of Pegatron Corporation. Defendant ASRock America denies the remaining allegations of this
27 paragraph.

28 8. Defendant ASRock America lacks knowledge or information sufficient to form a

1 belief about the truth of these allegations and on such basis denies them.

2 **JURISDICTION AND VENUE**

3 9. Defendant ASRock America admits that Plaintiff is a citizen of a different state that
4 the Defendants. Defendant ASRock America denies the remaining allegations of this paragraph.

5 10. Defendant ASRock America admits that it conducts business in California.
6 Defendant ASRock America denies that "...the events giving rise to this lawsuit occurred, in
7 substantial part, in California. As to the remaining allegations of this paragraph, Defendant ASRock
8 America lacks knowledge or information sufficient to form a belief about the truth of these
9 allegations and on such basis denies them.

10 11. Defendant ASRock America lacks knowledge or information sufficient to form a
11 belief about the truth of these allegations and on such basis denies them.

12 **FACTUAL BACKGROUND**

13 12. Defendant ASRock America denies these allegations as to it. Defendant ASRock
14 America admits that the website www.asrock.com contains language along the lines of the quoted
15 language in this paragraph; however, such website is not maintained, hosted, or owned by Defendant
16 ASRock America and any references to "ASRock" on such website are not to Defendant ASRock
17 America.

18 13. Denied.

19 14. Defendant ASRock America lacks knowledge or information sufficient to form a
20 belief about the truth of these allegations and on such basis denies them.

21 15. Defendant ASRock America lacks knowledge or information sufficient to form a
22 belief about the truth of these allegations and on such basis denies them.

23 16. Defendant ASRock America admits that the press release referred to in this paragraph
24 was issued in December 2010 and further alleges that the press release speaks for itself. Defendant
25 ASRock America denies that the reference to "ASRock" in such press release is to this answering
26 Defendant. Defendant ASRock America lacks knowledge or information sufficient to form a belief
27 about the truth of the allegation that such press release was issued by Auravision or that it was issued
28 from California and on such basis denies such allegations.

1 17. Denied.

2 18. Denied.

3 19. Defendant ASRock America denies that it was involved in developing or producing
4 any presentations or advertising statements relating to the ASRock Fatal1ty motherboards. Said
5 Defendant further denies the allegations of this paragraph.

6 20. Defendant ASRock America admits that the physical packaging of certain models of
7 the ASRock Fatal1ty motherboards contained, at one time, the following statement, among others:

8 “Boosts Networking Performance 5X.”

9 “5X Networking Performance...feature Killer E2200 Intelligent
10 Networking Platform, which boosts networking performance up to 5X
11 for time-sensitive UDP (User Datagram Protocol) based applications,
 such as online games and high quality media streaming.”

12 Except as so expressly admitted Defendant ASRock America denies the allegations of this
13 paragraph.

14 21. Defendant ASRock America admits that certain of the ASRock Fatal1ty
15 motherboards contain the Qualcomm Atheros Killer E2200 Intelligent Networking Platform and that
16 this component is referred to as the “Killer E2200 Series LAN” on the product packaging of certain
17 ASRock Fatal1ty motherboards. This answering Defendant denies that Qualcomm sells such
18 component to ASRock America. As to the remaining allegations of this paragraph, Defendant
19 ASRock America lacks knowledge or information sufficient to form a belief about the truth of these
20 allegations and on such basis denies them.

21 22. Defendant ASRock America lacks knowledge or information sufficient to form a
22 belief about the truth of these allegations and on such basis denies them.

23 23. Defendant ASRock America lacks knowledge or information sufficient to form a
24 belief about the truth of the allegations of the first sentence of this paragraph and on such basis
25 denies them. This answering Defendant denies the allegations of the second sentence of this
26 paragraph. Defendant ASRock America had no involvement in the design or production of the
27 ASRock Fatal1ty motherboards, or any of their components, and on such basis admits that it did not
28 modify the components. Defendant ASRock America denies the remaining allegations of this

1 paragraph.

2 24. Defendant ASRock America lacks knowledge or information sufficient to form a
3 belief about the truth of the allegations of the first sentence of this paragraph and on such basis
4 denies them. This answering Defendant admits the allegations of the second sentence of this
5 paragraph. This answering Defendant denies the allegations of the third sentence of this paragraph.

6 25. Defendant ASRock America lacks knowledge or information sufficient to form a
7 belief about the truth of these allegations and on such basis denies them.

8 26. Defendant ASRock America does not maintain a website and denies that it made any
9 of the statements alleged on any website, and denies the allegations of this paragraph.

10 27. Defendant ASRock America admits that changes were made to statements made on
11 the www.asrock.com website along the lines alleged in this paragraph but such website is not
12 created, hosted, maintained or owned by it. Defendant ASRock America does not maintain a
13 website and denies that it made any of the statements alleged on any website, and denies the
14 allegations of this paragraph.

15 28. Defendant ASRock America admits that Figure 3 sets forth a portion of the product
16 packaging that was used for a certain period of time for certain of the ASRock Fatal1ty
17 motherboards. Defendant ASRock America denies that it was involved in the creation of the
18 advertising statements at issue in the FAC or created, hosted, maintained or owned any website
19 which contains such statements and further denies that it was involved in the creation of the product
20 packaging for any of the products at issue in this action and denies the allegations of this paragraph.

21 29. Defendant ASRock America lacks knowledge or information sufficient to form a
22 belief about the truth of these allegations and on such basis denies them.

23 30. Defendant ASRock America denies that it was involved in the creation of the
24 advertising statements at issue or created, hosted, maintained or owned any website which contains
25 such statements and was not involved in the creation of the product packaging for any of the
26 products at issue in this action and denies the allegations of this paragraph.

27 31. Defendant ASRock America lacks knowledge or information sufficient to form a
28 belief about the truth of these allegations and on such basis denies them.

1 32. Defendant ASRock America denies that it made any of the advertising statements
2 which are the subject of the FAC and denies the allegations of this paragraph.

3 33. Defendant ASRock America denies that it made any of the statements alleged on any
4 website created, hosted maintained, or owned it and denies the allegations of this paragraph.

5 34. Defendant ASRock America admits that changes were made to statements made on
6 the www.asrock.com website along the lines alleged in this paragraph but such website is not
7 created, hosted, maintained or owned by it. Defendant ASRock America does not maintain a
8 website and denies that it made any of the statements alleged on any website, and denies the
9 allegations of this paragraph.

10 35. Defendant ASRock America admits that Figure 5 sets forth a portion of the product
11 packaging that was used for a certain period of time for certain of the ASRock Fatal1ty
12 motherboards. Defendant ASRock America denies that it was involved in the creation of the
13 advertising statements at issue or created, hosted, maintained or owned any website which contained
14 such statements and was not involved in the creation of the product packaging for any of the
15 products at issue in this action and denies the allegations of this paragraph.

16 36. Denied.

17 37. Defendant ASRock America admits that the ASRock Fatal1ty Z87 motherboard is
18 designed to use the Intel Z 87 Chipset; except as so expressly admitted this answering Defendant
19 denies the first sentence of this paragraph and further denies that it played any role in this design,
20 production, manufacturer or creation of such motherboards. As to the second sentence of this
21 paragraph, Defendant ASRock America lacks knowledge or information sufficient to form a belief
22 about the truth of these allegations and on such basis denies them.

23 38. Defendant ASRock America lacks knowledge or information sufficient to form a
24 belief about the truth of these allegations and on such basis denies them.

25 39. Denied.

26 40. Defendant ASRock America denies that it was involved in the creation of any user
27 manual for any of the products at issue in the FAC and denies the allegations of this paragraph.

28 41. Defendant ASRock America lacks knowledge or information sufficient to form a

1 belief about the truth of these allegations and on such basis denies them.

2 42. Denied.

3 43. Defendant ASRock America admits that changes were made to statements made on
4 the www.asrock.com website along the lines alleged in this paragraph but such website is not
5 created, hosted, maintained or owned by it. Defendant ASRock America does not maintain a
6 website and denies that it made any of the statements alleged on any website, and denies the
7 allegations of this paragraph.

8 44. Denied.

9 45. Denied.

10 46. Denied.

11 47. Defendant ASRock America lacks knowledge or information sufficient to form a
12 belief about the truth of these allegations and on such basis denies them.

13 48. Denied.

14 49. Defendant ASRock America lacks knowledge or information sufficient to form a
15 belief about the truth of these allegations and on such basis denies them.

16 50. Defendant ASRock America lacks knowledge or information sufficient to form a
17 belief about the truth of these allegations and on such basis denies them.

18 51. Defendant ASRock America lacks knowledge or information sufficient to form a
19 belief about the truth of these allegations and on such basis denies them.

20 52. Denied.

21 53. Denied.

22 54. Defendant ASRock America lacks knowledge or information sufficient to form a
23 belief about the truth of these allegations and on such basis denies them.

24 55. Denied.

25 **CLASS ALLEGATIONS**

26 56. Defendant ASRock America denies that this action may properly proceed as a class
27 action under the provisions of any applicable law. Responding further, Defendant ASRock America
28 lacks knowledge or information sufficient to form a belief about the truth of these allegations and on

1 such basis denies them.

2 57. Denied.

3 58. Denied.

4 59. Denied.

5 60. Denied.

6 61. Denied.

7 62. Denied.

8 63. Defendant ASRock America lacks knowledge or information sufficient to form a
9 belief about the truth of these allegations and on such basis denies them.

10 **FIRST CAUSE OF ACTION**
11 **Violation of Consumers Legal Remedies Act**
12 **Cal. Civ. Code §§ 1750, *et seq.***
(On Behalf of Plaintiff and the Class)

13 64. Defendant ASRock America hereby incorporates by reference its responses to the
14 allegations in each of the preceding paragraphs as if set out in full herein.

15 65. Defendant ASRock America denies that it engaged in the actions and/or conduct
16 alleged in the FAC and denies the allegations of this paragraph.

17 66. Admitted.

18 67. Defendant ASRock America lacks knowledge or information sufficient to form a
19 belief about the truth of these allegations and on such basis denies them.

20 68. Defendant ASRock America lacks knowledge or information sufficient to form a
21 belief about the truth of these allegations and on such basis denies them.

22 69. Denied.

23 70. Denied.

24 71. Denied.

25 72. Denied.

26 73. Denied.

27 74. Denied.

28 75. Denied.

1 76. Denied.

2 77. Defendant ASRock America lacks knowledge or information sufficient to form a
3 belief about the truth of these allegations and on such basis denies them.

4 78. Defendant ASRock America lacks knowledge or information sufficient to form a
5 belief about the truth of these allegations and on such basis denies them.

6 79. Defendant ASRock America lacks knowledge or information sufficient to form a
7 belief about the truth of these allegations and on such basis denies them.

8 80. Denied.

9 81. Defendant ASRock America lacks knowledge or information sufficient to form a
10 belief about the truth of these allegations and on such basis denies them.

11 82. Denied.

12 83. Defendant ASRock America lacks knowledge or information sufficient to form a
13 belief about the truth of the allegations in the first sentence of this paragraph and on such basis
14 denies them. Said answering defendant admits the allegations in the second sentence of this
15 paragraph. Said answering defendant further alleges that neither plaintiff nor the members of the
16 class he seeks to represent are entitled to any remedy against this answering defendant.

17 **SECOND CAUSE OF ACTION**
18 **Violations of California's Unfair Competition Law**
19 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***
 (On Behalf of Plaintiff and the Class)

20 84. Defendant ASRock America hereby incorporates by reference its responses to the
21 allegations in each of the preceding paragraphs as if set out in full herein.

22 85. The allegations in this paragraph are conclusions of law and not allegations of fact.
23 Defendant ASRock America admits that the courts and the California legislature have stated the
24 purpose of the UCL and that all parties are bound by such expressions to the extent that the law so
25 provides. Except as so expressly admitted, Defendant ASRock America lacks knowledge or
26 information sufficient to form a belief about the truth of these allegations and on such basis denies
27 them.

28 86. The allegations in this paragraph are conclusions of law and not allegations of fact.

1 Defendant ASRock America admits that the express language of the UCL speaks for itself. Except
2 as so expressly admitted, ASRock America lacks knowledge or information sufficient to form a
3 belief about the truth of these allegations and on such basis denies them.

4 87. Defendant ASRock America lacks knowledge or information sufficient to form a
5 belief about the truth of these allegations and on such basis denies them.

6 88. Denied.

7 89. Denied.

8 90. Denied.

9 91. Defendant ASRock America lacks knowledge or information sufficient to form a
10 belief about the truth of these allegations and on such basis denies them.

11 92. Defendant ASRock America denies that it engaged in the acts alleged in the FAC,
12 denies any conduct of these defendants was fraudulent or in any way improper and denies the
13 allegations of this paragraph.

14 93. Denied.

15 94. Denied.

16 95. Defendant ASRock America denies that it engaged in the acts alleged in the FAC,
17 denies any conduct of it was fraudulent or in any way improper and denies the allegations of this
18 paragraph. As to the remaining allegations in this paragraph, Defendant ASRock America lacks
19 knowledge or information sufficient to form a belief about the truth of these allegations and on such
20 basis denies them.

21 96. Defendant ASRock America lacks knowledge or information sufficient to form a
22 belief about the truth of the allegations in this paragraph and on such basis denies them. Said
23 answering defendant further alleges that neither plaintiff nor the members of the class he seeks to
24 represent are entitled to any remedy against this answering defendant.

25 **THIRD CAUSE OF ACTION**
26 **Violation of False Advertising Law**
27 **Cal. Bus. & Prof. Code §§ 17500, *et seq.***
(On Behalf of Plaintiff and the Class)

28 97. Defendant ASRock America hereby incorporates by reference its responses to the

1 allegations in each of the preceding paragraphs as if set out in full herein.

2 98. The allegations in this paragraph are conclusions of law and not allegations of fact.
3 Defendant ASRock America admits that the express language of the FAC speaks for itself. Except
4 as so expressly admitted, ASRock America lacks knowledge or information sufficient to form a
5 belief about the truth of these allegations and on such basis denies them.

6 99. Denied.

7 100. Denied.

8 101. Denied.

9 102. Denied.

10 103. Defendant ASRock America lacks knowledge or information sufficient to form a
11 belief about the truth of the allegations in this paragraph and on such basis denies them. Said
12 answering defendant further alleges that neither plaintiff nor the members of the class he seeks to
13 represent are entitled to any remedy against this answering defendant.

14 **FOURTH CAUSE OF ACTION**
15 **Fraud in the Inducement**
16 **(On Behalf of Plaintiff and the Class)**

17 104. Defendant ASRock America hereby incorporates by reference its responses to the
18 allegations in each of the preceding paragraphs as if set out in full herein.

19 105. Denied.

20 106. Denied.

21 107. Defendant ASRock America lacks knowledge or information sufficient to form a
22 belief about the truth of these allegations and on such basis denies them.

23 108. Denied.

24 109. Denied.

25 110. Denied.

26 111. Denied.

27 112. Denied.

28 113. Denied.

29 114. Defendant ASRock America lacks knowledge or information sufficient to form a

1 belief about the truth of the allegations in this paragraph and on such basis denies them. Said
2 answering defendant further alleges that neither plaintiff nor the members of the class he seeks to
3 represent are entitled to any remedy against this answering defendant.

4 **FIFTH CAUSE OF ACTION**
5 **Breach of Express Warranties**
6 **(On Behalf of Plaintiff and the Class)**

7 115. Defendant ASRock America hereby incorporates by reference its responses to the
8 allegations in each of the preceding paragraphs as if set out in full herein.

9 116. Defendant ASRock America denies that it made any of the advertising statements at
10 issue in the FAC, was involved in creating product packaging, or created, maintained, hosted, or
11 owned any website referred to in the FAC, and further denies it made any statement referred to in the
12 FAC that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations
13 of this paragraph.

14 117. Defendant ASRock America denies that it made any of the advertising statements at
15 issue in the FAC, was involved in creating product packaging, or created, maintained, hosted, or
16 owned any website referred to in the FAC, and further denies it made any statement referred to in the
17 FAC that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations
18 of this paragraph.

19 118. Defendant ASRock America denies that it made any of the advertising statements at
20 issue in the FAC, was involved in creating product packaging, or created, maintained, hosted, or
21 owned any website referred to in the FAC, and further denies it made any statement referred to in the
22 FAC that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations
23 of this paragraph.

24 119. Defendant ASRock America denies that it made any of the advertising statements at
25 issue in the FAC, was involved in creating product packaging, or created, maintained, hosted, or
26 owned any website referred to in the FAC, and further denies it made any statement referred ti the
27 FAC that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations
28 of this paragraph.

120. Denied.

121. Defendant ASRock America denies that it made any of the advertising statements at issue in the FAC, was involved in creating product packaging, or created, maintained, hosted, or owned any website referred to in the FAC, and further denies it made any statement referred to in the FAC that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations of this paragraph.

122. Defendant ASRock America denies that it made any of the advertising statements at issue in the FAC, was involved in creating product packaging, or created, maintained, hosted, or owned any website referred to in the FAC, and further denies it made any statement referred to in the FAC that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations of this paragraph.

123. Defendant ASRock America denies that it made any of the advertising statements at issue in the FAC, was involved in creating product packaging, or created, maintained, hosted, or owned any website referred to in the FAC, and further denies it made any statement referred to in the FAC that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations of this paragraph.

124. Defendant ASRock America lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on such basis denies them. Said answering defendant further alleges that neither plaintiff nor the members of the class he seeks to represent are entitled to any remedy against this answering defendant.

SIXTH CAUSE OF ACTION
Unjust Enrichment
(On Behalf of Plaintiff and the Class)

125. Defendant ASRock America hereby incorporates by reference its responses to the allegations in each of the preceding paragraphs as if set out in full herein.

126. Denied.

127. Denied.

128. Denied.

129. Defendant ASRock America lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on such basis denies them. Said

1 answering defendant further alleges that neither plaintiff nor the members of the class he seeks to
2 represent are entitled to any remedy against this answering defendant.

3 **AFFIRMATIVE DEFENSES**

4 ASRock America hereby asserts the following affirmative defenses to Plaintiff's claims.
5 ASRock America reserves the right to raise other defenses, affirmative or otherwise, that may
6 become evident during discovery and during any other proceeding in this action. ASRock America
7 also reserves the right to amend and/or delete any affirmative defenses in the event that discovery
8 indicates it may be appropriate to do so.

9 **FIRST AFFIRMATIVE DEFENSE** 10 **(Failure to State a Claim)**

11 130. As a first affirmative defense, Defendant ASRock America alleges that Plaintiff has
12 failed to state a claim upon which relief can be granted.

13 **SECOND AFFIRMATIVE DEFENSE** 14 **(Immunity under Communications Decency Act, 47 U.S. C. § 230)**

15 131. As a second affirmative defense, Defendant ASRock America alleges that it did not
16 create or develop any of the advertising statements on which the claims in this action are based, and
17 to the extent that any such statement is linked to or otherwise accessed by or through any website of
18 ASRock America, assuming there is any such website, ASRock America is immune from liability
19 and/or no claim can be brought against ASRock America based on such statement under the
20 Communications Decency Act, 47 U.S. C. § 230.

21 **THIRD AFFIRMATIVE DEFENSE** 22 **(Failure to Mitigate Alleged Damages)**

23 132. As a third affirmative defense, Defendant ASRock America alleges that Plaintiff has
24 not mitigated its damages, if any.

25 **FOURTH AFFIRMATIVE DEFENSE** 26 **(Unconstitutionality)**

27 133. As a fourth affirmative defense, Defendant ASRock America alleges that the claims,
28 to the extent that they seek exemplary or punitive damages, violate Defendant's rights to procedural

1 due process under the Fourteenth Amendment of the United States Constitution and, therefore, fail to
2 state a cause of action upon which punitive or exemplary damages can be awarded.

3 **FIFTH AFFIRMATIVE DEFENSE**
4 **(Reservation of Rights)**

5 134. As a fifth affirmative defense, Defendant ASRock America alleges that discovery has
6 not yet begun, and on the basis of such discovery, other affirmative defenses may become known or
7 substantiated. Defendant reserves the right to add affirmative defenses within a reasonable time
8 after the facts of said affirmative defenses may become known to Defendant.

9 **SIXTH AFFIRMATIVE DEFENSE**
10 **(Lack of Adequate Representation)**

11 135. As a sixth affirmative defense, Defendant ASRock America alleges the named
12 Plaintiffs lack standing as representatives of the proposed class and do not adequately represent the
13 putative class members.

14 **SEVENTH AFFIRMATIVE DEFENSE**
15 **(Fails to Meet Rule 23)**

16 136. As a seventh affirmative defense, Defendant ASRock America alleges that this action
17 does not meet the requirements for class action treatment under Rule 23 of the Federal Rules of Civil
18 Procedure, or any other applicable law, including, but not limited to, failing to satisfy the
19 requirements of numerosity, commonality and predominance, typicality, and superiority. Plaintiffs
20 cannot prosecute this action on behalf of the putative class they purport to represent.

21 **EIGHTH AFFIRMATIVE DEFENSE**
22 **(Defense of Other Defendants)**

23 137. As an eighth affirmative defense, Defendant ASRock America incorporates and
24 adopts each and every applicable defense asserted by any other defendant in this action.

25
26 WHEREFORE, Defendant ASRock America, Inc. prays as follows:

27 1. The Plaintiff take nothing by reason of its complaint and that judgment be entered in
28 favor of Defendants.

1 2. That Defendant ASRock America, Inc. be awarded its costs of suit incurred in
2 defense of this action; and,

3 3. For such other and further relief as the Court deems proper.
4

5 Dated: September 22, 2014

Respectfully submitted,

BAKER & McKENZIE LLP

By: /s/ Tod L. Gamlen

Tod L. Gamlen
Attorneys for Defendant
ASROCK AMERICA, INC.